

MAY 02 2016

LAWYERS FOR  
CLEAN WATER

April 22, 2016

**VIA U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

U.S. Department of Justice  
Citizen Suit Coordinator  
Environment and Natural Resources  
Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044-7415

Loretta Lynch, Attorney General  
U.S. Department of Justice  
Citizen Suit Coordinator  
Room 2615  
950 Pennsylvania, N.W.  
Washington, D.C. 20530

**VIA U.S. MAIL**

Jared Blumenfeld, Regional Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Re: ***California Sportsfishing Protection Alliance v. A.L. Gilbert Company, Case  
No. 1:15-cv-00533-DAD-SKO;  
Settlement Agreement***

Dear Sir or Madam:

California Sportsfishing Protection Alliance ("CSPA") hereby provides a copy of the Settlement Agreement in the above titled action for the Administrators of the United States Environmental Protection Agency ("EPA") and the Region IX EPA, and the Attorney General, United States Department of Justice ("DOJ").

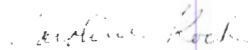
*CSPA v. A.L. Gilbert Company*

April 22, 2016

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CSPA is willing to work in good faith to resolve any issues DOJ or EPA might have with the provisions in the Settlement Agreement. Please contact Caroline Koch, attorney for CSPA, at (415) 440-6520 x203, if you have any questions. Thank you for your cooperation on this matter.

Sincerely Yours,



Caroline Koch  
Lawyers for Clean Water, Inc.

Cc: A.L. Gilbert Company c/o Rob Gilbert  
Bill Fox and Kari Casey, WHF Inc. Environmental and Engineering Group  
Kathy L. Monday, Damrell, Nelson, Schrimp, Pallios, Pacher & Silva

## **MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

This Mutual Release and Settlement Agreement ("Agreement") is entered into by and between California Sportfishing Protection Alliance ("CSPA"), on the one hand, and A.L. Gilbert Company ("A.L. Gilbert"), a California corporation, on the other hand. When referring to all parties to the Agreement, the reference shall be the "Parties;" when referring to CSPA or A.L. Gilbert in this Agreement, the reference shall be to the "Party."

### **RECITALS**

This Agreement is made with reference to and in consideration of the following facts:

- A. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California's waters.
- B. A.L. Gilbert owns and operates a feed manufacturing facility, specifically for the dairy industry, located at 304 N. Yosemite Avenue, Oakdale, California (the "Facility").
- C. The Facility discharges storm water associated with industrial activity. A.L. Gilbert filed a Notice of Intent (WDID No. 55F01001719) to comply with the terms of the California State Water Resource Control Board's General Industrial Storm Water Permit, General Permit No. CAS000001, Water Quality Order No. 97-03-DWQ and Water Quality Order No. 2014-0057 DWQ (the "General Permit"). The Facility is subject to various federal and state regulatory requirements, including compliance with the Federal Water Pollution Control Act, 33 U.S.C. section 1251, *et seq.* (the "Clean Water Act") and the General Permit.
- D. There is now a pending litigation styled as: "*California Sportfishing Protection Alliance v. A.L. Gilbert Company*," before the United States District Court, Eastern District of California, Case No. 1:15-CV-00533-DAD-SKC (the "Litigation"). CSPA has alleged in its

Complaint filed on April 6, 2015, ("the Complaint") in the Litigation that A.L. Gilbert violated provisions of the General Permit and the Clean Water Act, and that these violations are ongoing. Prior to filing the Litigation, on or about February 3, 2015, CSPA caused to be delivered to A.L. Gilbert, a notice of alleged violations of the Clean Water Act and its intent to sue (the "2015 Notice Letter"). On or about January 29, 2016, CSPA caused to be delivered to A.L. Gilbert, a supplemental notice of alleged violations of the Clean Water Act and its intent to sue (the "2016 Notice Letter").

E. A.L. Gilbert denies it violated the provisions of the General Permit and the Clean Water Act as alleged in the Notice Letters and the Litigation, and it maintains that it has complied at all times with the provisions of the General Permit and the Clean Water Act.

F. The Parties have engaged in good faith negotiations including in settlement conferences supervised by Magistrate Judge Erica Grosjean. The Parties desire to enter into this Agreement for the purpose of avoiding the burden, expense, and uncertainty of further litigation, and for the purpose of resolving outstanding and potential disputes, differences, claims and controversies between them, as set forth herein. By entering into this Agreement, no Party is admitting any fault, liability, or wrongdoing with respect to the facts, allegations, or claims alleged in the Litigation, nor shall this Agreement be construed as such.

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, the Parties agree as follows:

## **TERMS OF SETTLEMENT**

1. **Effective Date.**

(a) The effective date ("Effective Date") of the Agreement shall be the date on which all Parties have signed the Agreement.

2. **Review of Agreement by Federal Agencies:** The Agreement expressly contemplates agency review as set forth herein. Within five (5) calendar days of the Effective Date, CSPA shall notify the U.S. Department of Justice and U.S. Environmental Protection Agency ("Federal Agencies") of the settlement and shall submit this Agreement to the Federal Agencies for their 45-day review period. CSPA shall simultaneously send a copy of such notification to A.L. Gilbert. CSPA will notify A.L. Gilbert of the date that the Federal Agencies' 45-day review period ends, and whether the Federal Agencies have commented on, or approved, the Agreement. In the event that the Federal Agencies are not satisfied with a term(s) of this Agreement, and the Federal Agencies object to a term(s) of the Agreement, the Parties agree to meet and confer regarding the issue(s) raised by the Federal Agencies. Neither the approval nor the resolution of the issue(s) raised by the Federal Agencies is a condition precedent to the Agreement or the dismissal of the action as contemplated herein.

3. **Monetary Terms of Settlement.** A.L. Gilbert shall pay to CSPA the sum of Ninety Thousand Dollars (\$90,000.00) ("the Monetary Payment") within two (2) business days of A.L. Gilbert's receipt of BMP Confirmation Notice from CSPA, through its counsel as set forth in Section 5. The Monetary Payment shall be made payable to: "Lawyers for Clean Water Attorney-Client Trust Account." The check shall be remitted to counsel for CSPA (at the address set forth under the **Notices** provision herein below), who shall be solely responsible for

distribution of the funds, which shall be as follows:

- (LF) towards partial reimbursement of CSPA's
- a) Seventy Two Thousand Dollars (\$72,000.00) ~~to be used for a Supplemental~~  
~~litigation fees and costs incurred in this litigation.~~  
~~Environmental Project in the Sacramento-San Joaquin Watershed.~~ (F)
- b) Fifteen Thousand Dollars (\$15,000.00) ~~towards partial reimbursement of CSPA's~~  
~~Environmental Project in the Sacramento-San Joaquin Watershed.~~  
~~litigation fees and costs incurred in this litigation.~~ to be used for a Supplemental
- c) Three Thousand Dollars (\$3,000.00) to be used towards partial reimbursement for  
CSPA's fees and costs incurred in the verification process set out in Section 5.

4. **Compliance with the General Permit.** A.L. Gilbert agrees to comply with the General Permit, including but not limited to maintaining current Best Management Practices ("BMPs"), modifying them when appropriate, and developing and implementing additional BMPs as set forth below.

- a) **Best Management Practices A.L. Gilbert Shall Implement.** Within sixty (60) calendar days of the Effective Date, A.L. Gilbert shall:
- i. Obtain and utilize an automated digital rain gauge and log and/or retain the rain data;
  - ii. Improve filter media system by constructing wattle housing traps in each of the six drainage areas to improve capturing larger particles. Install before September 30th
  - iii. Perform a power wash of the impervious areas of the Facility including, but not limited to, around and on storage silos. A.L. Gilbert will keep a record of these power washes;
  - iv. Purchase a regenerative air sweeper that is small enough to enable A.L.



Gilbert to sweep partially inside and in the ingress and egress areas of warehouses and grain bagging and production of feed areas and adequate to properly sweep the exterior areas. Perform daily sweeping of outdoor impervious areas with new sweeper. Perform daily sweeping of the ingress and egress areas of warehouses and operations buildings. Perform as-needed sweeping of the partial interior of warehouses and operations buildings to assist in preventing track out. Perform sweeping specifically in truck unloading areas at the middle of the day (and at the end of the day as usual) to assist in preventing track out;

- v. Move items currently being stored under the eaves of the building facing Yosemite Avenue in the area near the corner of Yosemite Avenue and "C" Street to ensure that any storm water discharging from that area is not exposed to industrial activities or materials. A.L. Gilbert shall specially address in its revised §W.PPP that the aforementioned drainage area qualifies for Non-Exposure Certification ("NEC") coverage, which shall be demonstrated through an NEC checklist and certification statement incorporated into the §W.PPP, pursuant to the applicable provisions of the General Permit;
- vi. At truck loading areas replace worn, tattered and/or older shrouds with new shrouds, or similar material, as necessary to minimize dust. This applies to the three load out areas. Each load out area has four (4) shrouds which will be inspected by the Facility manager and replaced as necessary.

The shrouds shall extend as far as close to the truck hull as possible within any restrictions, however, that may apply to the use of such shrouds.

b) **Best Management Practices A.L. Gilbert Currently Engages In.** A.L. Gilbert

confirms that the following BMPs are currently implemented or that it currently engages in the following tasks and will continue to do so in the upcoming storm seasons per its October 2015 SWPPP:

- i. Perform daily vacuum sweeping as well as vacuum sweeping before rain events. A.L. Gilbert will use the rain predictions for the Oakdale area provided by the Nation Weather Service website  
(<http://forecast.weather.gov/MapClick.php?w3u=1&w7=rain&w13u=0&w15u=1&AheadHour=0&Submit=Submit&FcstType=graphical&textField1=37.77&textField2=-120.8618&site=all&unit=0&dd=&bw=>) in implementing this BMP;
- ii. Continue use of media filter wattles around each of the six drainage areas prior to rain events;
- iii. To the extent it is necessary, continue to properly manage pooling of water that occurs at French drains so that they do not become an unauthorized stormwater discharge;
- iv. Maintain plywood siding installed around the feed tanks to minimize fugitive dust when buggies are loaded;
- v. Perform all vehicle maintenance indoors, and perform all equipment maintenance to the extent possible indoors; perform equipment



maintenance that cannot be done indoors in covered areas not exposed to stormwater; equipment that cannot be maintained indoors or undercover, for example air quality equipment on the roof and grain elevators, etc., shall be repaired during non-storm periods; and

- vi. Load all trucks using fabric shrouds that extend as close to the truck hull as possible within any restrictions, however, that may apply to the use of such shrouds to mitigate fugitive dust.

- c) **Sampling and Analysis.** A.L. Gilbert shall collect samples during qualifying storm events, as defined in the General Permit, from the following discharge locations, which are identified on the Facility map in the October 2015 SWPPP: North A; North B; North C; North D, and; South A. A.L. Gilbert agrees to prevent storm water associated with industrial activities from discharging from any other location than those identified in this Section. A.L. Gilbert will obtain samples in compliance with the terms of Section XI.B. (page 39) of the General Permit, which, among other things, defines what a “qualifying” storm event is. A.L. Gilbert will analyze all qualifying storm event samples for the following test parameters: Total Suspended Solids, Oil and Grease, pH, Magnesium, Copper, Zinc, and Biological Oxygen Demand.

Nothing in this paragraph is intended to expand the obligations of A.L. Gilbert under the General Permit, other than as expressly set forth in the Agreement; rather, these terms and conditions are intended to assist A.L. Gilbert to engage in a productive ongoing iterative process intended to improve storm water management at the Facility and to meet the objectives of the

General Permit.

5. **Dismissal of the Entire Action.** A.L. Gilbert shall notify CSPA within five (5) business days of the completion of the items listed in Section 4(a), and provide CSPA with an amended SWPPP, reflecting implementation (or planned implementation regarding September 30 deadline BMPs) of the BMPs set forth in Section 4(a) of the Agreement, and confirming that all BMPs listed in Section 4(b) remain in place. CSPA shall notice an inspection of the Facility to confirm development and/or continued maintenance of the BMPs listed in Section 4 as soon as possible, but not later than three (3) business days from receipt of notice from A.L. Gilbert. CSPA shall conduct and A.L. Gilbert will allow the noticed inspection within ten (10) business days of the notice. Within five (5) business days of CSPA's inspection, if CSPA has confirmed that the BMPs in Section 4 have been fully implemented and/or continue to be implemented, CSPA shall provide A.L. Gilbert with written confirmation ("BMP Confirmation Notice") that the Litigation is now over. CSPA will not unreasonably withhold such confirmation. Within two (2) business days of CSPA's confirmation that the Monetary Terms of Settlement payment as set forth in Section 3 has cleared, CSPA, through its counsel, shall cause to be filed a stipulation and proposed order dismissing the entire action with prejudice.

6. **Parties to Bear Own Costs and Attorney's Fees.** Except as otherwise provided in the Agreement, ~~and specifically as stated in Section 11(b)~~ <sup>(KM) (LF)</sup>, the Parties each acknowledge and agree that each Party is to bear its own costs and attorneys' fees incurred in connection with the Notice Letter, the Litigation, the preparation of this Agreement, and the performance of the matters and obligations set forth herein.

7. **Mutual Releases.** Each Party releases and discharges the Parties to this

Agreement as set forth in Sections 7(a) through 7(c) below:

(a) "Released Claims" refers to any and all claims arising from or relating in any manner to the Notice Letters, the Complaint and/or the Litigation, including without limitation, any controversies, grievances, actions, injuries, charges, complaints, suits, rights, losses, debts, judgments, expenses, causes of action, obligations, damages, demands, liens, agreements, contracts, covenants, costs, penalties, fees, expenses, attorneys' fees and costs (including costs of investigation, remediation, testing, monitoring), obligations, orders, subrogation rights, indemnification rights, and liabilities, of whatever kind or nature, in law, equity or otherwise, from the beginning of time to the date of this Agreement, whether due or owing in the past, present or future, and whether now known or unknown, vested or contingent, suspected or unsuspected, fixed or contingent, matured or unmatured, that one Party has or may have against the other Party, that existed, exists or may have existed as of the Effective Date of this Agreement. "Released Claims" include any claims arising from or relating in any manner to the Notice Letters, the Complaint and/or the Litigation as they relate to the Facility, that the Parties have or may have against any other Party, the Facility, or the Facility's management and operation of the Facility occurring prior to the Effective Date. "Released Claims" shall not include any claims that one Party may have against another Party arising from or related to the enforcement or performance of this Agreement, nor shall they include any claims relating to compliance with any laws, rules, regulations permits or other legal requirements at any location other than the Facility.

(b) In consideration of this Agreement and the terms and conditions set forth in this Agreement, CSPA, its affiliates, subsidiaries, officers, directors, partners, joint venturers,

assigns, predecessors-in-interest, successors-in-interest, successor trustees, insurers, past and present, fully and forever release and discharge A.L. Gilbert, its affiliates, subsidiaries, shareholders, officers, directors, partners, joint venturers, agents, employees, representatives, consultants, heirs, assigns, predecessors-in-interest, successors-in-interest, successor trustees, attorneys, insurers, past and present, from any and all Released Claims, as defined in Section 7(a) of this Agreement.

(c) In consideration of this Agreement and the terms and conditions set forth in this Agreement, A.L. Gilbert, its affiliates, subsidiaries, shareholders, officers, directors, partners, joint venturers, agents, employees, representatives, consultants, heirs, assigns, predecessors-in-interest, successors-in-interest, successor trustees, attorneys, insurers, past and present, fully and forever release and discharge CSPA, its respective affiliates, subsidiaries, officers, directors, members, partners, joint venturers, agents, employees, representatives, consultants, heirs, assigns, predecessors-in-interest, successors-in-interest, successor trustees, attorneys, insurers, past and present, from any and all Released Claims, as defined in Section 7(a) of this Agreement.

8. **Acknowledgment of Release and Waiver of Section 1542.**

(a) The Parties to this Agreement understand and agree that as a material consideration and inducement to enter into this Agreement, each Party does hereby fully and finally release the other Party from all Released Claims. As a further consideration and inducement for this compromise settlement, the Parties each waive all rights or benefits which each may now have, or in the future may have, with respect to Released Claims, under the terms of Section 1542 of the Civil Code of the State of California, to the extent it may be applicable.

Each Party, upon advice of counsel, does specifically and knowingly waive the application of California Civil Code section 1542 to this Agreement.

(b) Each Party further certifies that he, she or it has read the following provisions of California Civil Code section 1542:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

9. **Covenant Not to Sue.** CSPA agrees that CSPA, its officers, executive staff, and members of its governing board, shall be prohibited from serving any Notices of Violations and Intent to Sue or filing any lawsuits against A.L. Gilbert regarding the Facility’s Clean Water Act storm water management and operation of the Facility, or alleged violations of the General Permit and/or the Clean Water Act at the Facility for a period of three (3) years from the Effective Date, and any lawsuit filed shall be limited to claims prospective from the end of the 2017/2018 Reporting Year (i.e. June 30, 2018).

10. **No Admission of Liability.** Neither the transfer of any consideration, the doing of any of the acts referred to in this Agreement, nor anything else contained in this Agreement shall be taken or construed to be an admission by any Party of any claims, demands, controversies, grievances, actions, injuries, charges, complaints, suits, rights, losses, debts, judgments, expenses, causes of action, obligations, damages, liabilities and costs, fines, penalties including attorneys’ fees, asserted by the Parties, or any one of them.

12. **Construction of Agreement.** This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties each



acknowledge and agree that this Agreement shall not be deemed to have been prepared or drafted by one Party or another, and shall be construed as a whole according to its fair meaning and not for or against any Party hereto.

13. **Free and Voluntary Execution.** The Parties represent and acknowledge that they have each read this Agreement and understand all of its terms and execute this Agreement freely, voluntarily and without coercion, with full knowledge of its significance and the legal consequences thereof.

14. **Authority.** Each Party hereto represents and warrants to the other Parties that he, she or it has the full power and authority to execute, deliver and perform under this Agreement.

15. **Advice of Counsel.** Each Party warrants and represents that in executing this Agreement, the terms of this Agreement have been read and its consequences (including, but not limited to risks, complications, and costs) have been completely explained to him, her or it by an attorney of his, her or its own choosing; and that each fully understands the terms of this Agreement. Each Party further warrants and represents that it has not relied upon the advice or counsel of another Party's counsel in the negotiation, drafting, or execution of this Agreement.

16. **Successors and Assignment.** This Agreement shall be binding on, and inure to the benefit of, each of the Parties hereto and their respective successors in interest. The Parties each understand and expressly agree that this Agreement shall bind and benefit their respective present and former officers, directors, employees, predecessors, successors, successor trustees, heirs, estates, beneficiaries and their estates and any trust created by any of them, executors, administrators, joint venturers, corporations, divisions, insurers, parents, subsidiaries, affiliates, partners, stockholders, agents, heirs and assigns. Except as otherwise expressly provided, this



Agreement is not for the benefit of any person or entity who is not a Party to this Agreement or specifically identified as a beneficiary herein, or specifically identified as a person or entity released hereby, and is not intended to constitute a third party beneficiary contract. The Parties each warrant that they have not transferred or assigned, or purported to transfer or assign, any of the rights released by this Agreement.

17. **Severability.** If any provision or part of any provision of this Agreement shall for any reason be held to be invalid, unenforceable, or contrary to public policy or any law, then the remainder of this Agreement shall not be affected.

18. **Cooperation.** Each Party to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may reasonably be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

19. **Entire Agreement.** This Agreement represents the entire understanding between the Parties, and each of them, in connection with the subject matter of this Agreement. There are no oral or written representations, warranties, agreements, arrangements, or undertakings, between or among the Parties, or any of them, related to the subject matter of this Agreement, that are not fully expressed herein. The terms of this Agreement are contractual and not mere recitals. This Agreement cannot be altered or varied except by a writing duly signed by each of the Parties, or their respective authorized representative(s).

20. **Modifications to Agreement.** This Agreement may be modified or amended only by a writing signed by all the Parties to this Agreement.

21. **Notices.** Except as otherwise expressly provided by law, any and all notices or

other communications required or permitted by this Agreement to be served or given by a Party shall be in writing and shall be deemed duly served and given when personally delivered to the Party to whom directed, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed as set forth below:

(a) CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

Bill Jennings  
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
3536 Rainier Avenue  
Stockton, California 95204  
E-mail: DeltaKeep@me.com

With copies sent to:

Caroline Koch  
1004 O'Reilly Avenue  
San Francisco, CA 94129  
Tel: (415) 440-6520  
Fax: (415) 440-4155  
Email: caroline@lawyersforcleanwater.com

(b) A.L. GILBERT COMPANY

Rob Gilbert  
304 N. Yosemite Avenue  
Mailing: P.O. Box 38  
Oakdale, CA 95361  
Tel: (209)847-1721  
Fax: (209)847-3542

With copies sent to:

Bill Fox and Kari Casey  
WHF Inc. Environmental and Engineering Group  
P.O. Box 427  
Oakdale, CA 95361  
Tel: (209)848-4280

Kathy L. Monday  
Damrell, Nelson, Schrimp,  
Pallios, Pacher & Silva  
1601 I Street, Fifth Floor

Modesto, California 95354  
Telephone: (209) 526-3500  
Facsimile: (209) 526-3534  
Email: kmonday@damrell.com

22. Execution in Counterparts and Exchange of Signatures by Facsimile or PDF.

This Agreement may be signed in counterparts, each of which, when executed shall constitute an original, but such counterparts collectively, in their entirety, shall together, be considered one and the same Agreement. Facsimile or PDF signatures shall be treated as original signatures for purposes of this Agreement.

AGREED AND ACCEPTED:

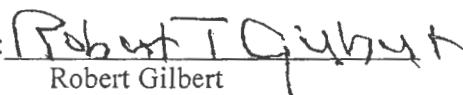
Date: April 21, 2016

CALIFORNIA SPORTFISHING PROTECTION  
ALLIANCE

By:   
Bill Jennings  
Its: Executive Director

Date: April 21, 2016

A.L. GILBERT

By:   
Robert Gilbert  
Its: Chief Financial Officer